

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Aqua Illinois)	
)	
Proposed General Increase)	Docket No. 11-0436
In Water and Sewer Rates.)	

**PEOPLE OF THE STATE OF ILLINOIS'S
REPLY BRIEF ON REHEARING**

**The People of the State of Illinois
LISA MADIGAN, Attorney General of Illinois**

Cathy Yu, Assistant Attorney General
Susan L. Satter, Senior Assistant Attorney General
Public Utilities Bureau
100 West Randolph Street, 11th Fl.
Chicago, IL 60601
Telephone: (312) 814-8496
Facsimile: (312) 814-3212
Email: cyu@atg.state.il.us
Email: ssatter@atg.state.il.us

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I. INTRODUCTION

On March 16, 2012, Viscofan USA, Inc. (“Viscofan”) filed a Petition for Rehearing of the Illinois Commerce Commission’s (“Commission”) Final Order on the Commission’s decision to adopt the Commission Staff’s (“Staff”) proposed increase of 20% to the Large General Service Rate. Rehearing was granted by the Commission on April 4, 2012. The People of the State of Illinois, by and through Lisa Madigan, Attorney General (“People” or “AG”), Staff, Viscofan, and Aqua Illinois, Inc. (“Aqua”) submitted Initial Briefs on July 22, 2012. The People submit the reply below.

II. RESPONSE TO STAFF

Staff argues in its Initial Brief that in order for the Commission to remain consistent with its Order in Docket No. 04-0442, the Commission should, at minimum, adopt a 14.11% increase to Aqua’s Large General Service rate, in which Viscofan currently is the only customer. Staff Initial Brief at 3. Staff’s recommendation, however, is that the Commission stay with its decision in the 11-0436 Final Order, which approved an overall rate increase of 20% for Viscofan. *Id.* The AG agrees with Staff’s recommendation that the Commission stay with its decision in the 11-0436 Final Order to approve an overall rate increase of 20% for Viscofan in the absence of a longer-term contract for Viscofan that mitigates risk to Aqua and its other customers in return for a reduced rate.

III. RESPONSE TO VISCOFAN

Viscofan argues that its current four year agreement with Aqua is already a long term contract and rejects the People’s assertion that a longer term contract would be necessary in order for there to be a reduction in rates. The People disagree. The 20% increase that was approved by the Commission in the Final Order of 11-0436 was based upon the full facts

presented by all of the parties. The present case on rehearing simply presents additional information that backup Viscofan's threat to leave the system should its rate remain at a 20% increase. But this additional information does not weigh on the appropriateness of the 20% increase or justify shifting more costs from Viscofan to other consumers. Viscofan's study showing that it could save money by self-supplying does not warrant a change in the rate set by the Commission. On the contrary, Viscofan's testimony on rehearing shows that it is planning to pay the Commission approved rates, at least for the next four years.

While the People recognize that there is a benefit to Aqua and Aqua's other customers if Viscofan remains in the Aqua system, the People do not believe that Viscofan should be entitled to a lower rate simply because it has a self-supply alternative. Based upon all the facts in the case in chief, the Commission determined that the appropriate rate increase is 20% for Viscofan. Viscofan did not argue on rehearing that there was an error in the rates established by the Commission nor did Viscofan show that Aqua's cost to serve it are lower than in the case in chief. Therefore, a smaller than 20% increase must be accompanied by a change to another issue, such as the length of Viscofan's contract or other individualized terms (an example of which is found in AG Ex. 3.02) that will protect Aqua and its other customers by giving them stability in return for the lower rates. Otherwise, lowering the rate from the 20% that the Commission has deemed appropriate without ensuring that Aqua's other customers are not harmed by this change would amount to an irrational reversal.

Additionally, Viscofan argues that the Large General Service Rate is intended to encourage large users like Viscofan to remain Aqua customers. The People do not dispute this and do not, as Viscofan argues, misunderstand the purpose of the Large General Service Rate. The People are not arguing on this rehearing that Viscofan's rate should be increased to recover

its fully embedded cost of service. Rather, the People are asking the Commission to reaffirm what it decided in the case in chief as the appropriate increase for Viscofan's rates. Compared to the increases that the Commission approved for Aqua's other service classes, Viscofan's increase is relatively low. The People maintain that no change in Viscofan's rate has been justified.

Lastly, Viscofan argues that the People's proposal of a longer term, more individualized contract as a solution to Viscofan's demand for lower rates should not be considered on rehearing because the People proposed a similar solution in the case in chief. This attempt by Viscofan to reargue its May 30, 2012 Motion to Strike is inappropriate as Viscofan's Motion was denied on June 6, 2012. Therefore, the People simply note that pursuant to Administrative Law Judge ("ALJ") Jones' ruling on Viscofan's Motion to Strike, the People's argument regarding a longer term contract directly addresses whether Viscofan's arguments and analysis on rehearing justify the reduction that it is seeking. June 6, 2012 ALJ Jones' Ruling. ("If Viscofan wants its rates reduced on rehearing, which could increase rates for other customers, then other Parties should not be prevented from addressing whether Viscofan's arguments and analysis on rehearing justify such a reduction.")

IV. RESPONSE TO AQUA

Similar to Viscofan, Aqua also attempts to address issues that ALJ Jones already decided in his ruling on Viscofan's Motion to Strike by stating that the People's proposal of a longer term and more individualized contract is outside the scope of rehearing. The People repeat their assertion that such a contract directly addresses whether Viscofan's arguments and analysis on rehearing justify the reduction that it is seeking and that ALJ Jones has already ruled that the People's testimony is not outside the scope of rehearing.

Aqua further argues in opposition to the People's proposal for a longer term, individualized contract by stating that its current four year contract comports with Aqua's Commission-approved tariffs. The People do not dispute this. This argument, however, does not actually address the People's position that an individualized contract with Viscofan would be an appropriate approach to reducing the risk on Aqua and Aqua's other customers should the Commission consider lowering Viscofan's rates below the 20% increase. As argued in the People's Initial Brief, such a contract could couple a lower rate for Viscofan with commitments by Viscofan to provide an assured revenue stream over a long period of time. AG Initial Brief at 4. There is no justification for providing Viscofan with a lower rate in the absence of a contract that reduces the risk to other customers and provides Aqua and the other customers with long-term stability. The fact that Aqua's current four-year contract comports with Aqua's existing Commission-approved tariffs shows that Viscofan can operate at the new, higher rate, but otherwise does not address the range of issues that would arise in an individualized contract negotiation.

V. CONCLUSION

Therefore, the People request that no changes be made to the tariffed rates approved in the Final Order in this docket and that the Commission require Aqua to attempt to negotiate a longer-term, individualized contract with Viscofan to address the costs and risks associated with serving Viscofan.

Respectfully submitted,
The People of the State of Illinois
By LISA MADIGAN, Attorney General



Cathy Yu, Assistant Attorney General
Susan L. Satter, Senior Assistant Attorney General
Janice A. Dale, Bureau Chief
Public Utilities Bureau
Illinois Attorney General's Office
100 West Randolph Street, 11th Fl.
Chicago, IL 60601
Telephone: (312) 814-8496
Facsimile: (312) 814-3212

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